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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of ) Examiner: M. NGUYEN  
M. ENGELEN, et al. )  
Serial No.: 10/596,045 ) Art Unit: 2176  
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For: **COMPATIBILITY CHECK** )  
**BETWEEN APPLICATIONS** )  
**AND FILES** )  
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NL031426US1/PKRZ 201571US01 ) June 23, 2010

**APPEAL BRIEF**

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is an Appeal from the Final Rejection of January 12, 2010.

A Notice of Appeal and fee were filed April 28, 2010.

The Appeal Brief submission fee is being submitted herewith.

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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I certify that this **APPEAL BRIEF** is being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

June 23 2010

Date

Patricia A. Heim

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(i) REAL PARTY IN INTEREST

The Real Party in Interest is the Assignee, KONINKLIJKE PHILIPS ELECTRONICS, N.V.

(ii) RELATED APPEALS AND INTERFERENCES

None.

(iii) STATUS OF CLAIMS

Claims 1-9 stand rejected

Claims 10 and 11 have been cancelled.

No claims stand allowed.

The rejection of claims 1-9 is being appealed.

(iv) STATUS OF AMENDMENTS

The Amendment After Final of April 6, 2010 has been entered.

(v) SUMMARY OF CLAIMED SUBJECT MATTER

1. Data processing system comprising a computer having a memory for storage and retrieval of at least one application program embodying a pre-determined functionality, and for storage and retrieval of at least one data-file, which computer comprises a user interface for entertaining communication between the computer and a user of said computer {p. 4, l. 16-26}, wherein the at least one application program comprises validation software for checking and enabling the operability of said application program in connection with the at least one data-file, and processing software for executing the said functionality in connection with the at least one data-file in dependence of said enabling by the validation software {p. 4, l. 26-31}, wherein the validation software is executed separately and independently from the processing software {p. 2, l. 12-15; p. 4, l. 32 – p. 5, l. 2}.
2. Data processing system according to claim 1, wherein the user interface starts execution of the validation software and after completion thereof communicate a result of said execution to the user {p. 5, l. 3-6}.
3. Data processing system according to claim 1, wherein the user interface starts execution of the validation software and/or starts execution of the validation software immediately followed by execution of the processing software {p. 3, l. 6-12}.
4. Data processing system according to claim 1, wherein upon selection of an application program the user interface starts execution of the validation software of said application program in connection with all available data sets and after completion thereof communicates the data-file or data-files that are operable in connection with said application program {p. 3, l. 13-17; p. 5, l. 16-20}.
5. Data processing system according to claim 1, wherein upon selection of a data-file the user interface starts execution of the validation software of all available application programs and after completion thereof communicates the

application program or programs that are operable in connection with said data-file {p. 3, l. 18-21; p. 5, l. 7-15}.

6. Data processing system according to claim 1, wherein the user interface has a memory for storage and retrieval of a result or results from executing the validation software {p. 3, l. 22-25}.

7. Data processing system according to claim 1, wherein the at least one application program and the at least one data-file relate to medical information {p. 3, l. 26-34}.

8. Data processing system according to claim 7, wherein the medical information is medical diagnostic information {p. 3, l. 26-34}.

9. Data processing system according to claim 7, wherein the at least one data-file contains information derived with an apparatus selected from the group of MRI-, CT-, X-ray-, and ultrasound-systems {p. 4, l. 1-4}.

10-11. (Cancelled)

(vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-9 distinguish patentably in the sense of 35 U.S.C. § 103 over allegedly admitted prior art as modified by O'Rourke (US 7,225,408).

(vii) ARGUMENT

A. Claims 1-9 Distinguish Patentably Over the References of Record

Claim 1 calls for at least one application program which has two parts: (1) validation software, and (2) processing software. The validation software is executed separately and independently from the processing software.

More specifically, claim 1 calls for the validation software to check and enable the operability of the application program in conjunction with the data file to be retrieved. As pointed out on page 1, lines 9-11 of the present application, each application program requires specific types of data files. A data file that is useable in conjunction with one application program, such as a photoprocessing program, is typically not operable or retrievable by other types of programs, such as a word processing program. As set forth on the top of page 2 of the present application, in the past, one needed to start the execution of the application program in order to determine the compatibility between the application program and the data file to be opened. As set forth starting on line 12 of page 2 of the present application, the present application is an improvement in that the validation software is executable separately and independently from the processing software of the application program. This achieves the advantages and benefits set forth starting at page 2, line 15 of the present application and continuing to page 3, line 2.

The O'Rourke patent is not concerned with determining the compatibility of an application program and a data file. Rather, O'Rourke is directed to using a password to check whether a user is authorized to access a program or data.

More specifically, the Examiner directs the applicant's attention to column 4, lines 15-58 and column 6, lines 4-51, and Figure 1 of O'Rourke. Column 4, lines 15-58 relate to authorization to access information, e.g., via password verification (lines 51-52). O'Rourke is also concerned with allowing the user to select a predetermined hierarchy of communication links (lines 30-36). In this manner, a physician can access a medical data for a group of patients for whom the physician has appropriate authorization, e.g., as determined by the password verification, to access. Different medical professionals would have access to different patients. Individual users might only have access to their own medical information.

Thus, column 4, lines 15-58 of O'Rourke relate to the use of passwords to restrict/permit access to medical information to only authorized users. That is, this portion of O'Rourke discusses validating a user, not determining the compatibility of an application program with a data file.

Similarly, column 6, lines 4-51 of O'Rourke provide an example of how a user uses a password to access selected medical information. Significant by its absence is any suggestion in this section of O'Rourke concerning checking the compatibility of various application programs which might be accessed and various data files of the selected patient. O'Rourke does not address the issue of whether patient data files are compatible with various application programs.

Thus, claim 1 is concerned with validation for checking and enabling the operability of an application program in conjunction with a data file. By distinction, O'Rourke is concerned with validating whether a given user is authorized to have access to the medical records of various patients.

Looking at O'Rourke in still greater detail, O'Rourke is concerned with a wireless, portable device, similar to a PDA, but designed specifically to access patient records remotely over a hierarchy of LANs or WANs such as Ethernet-compatible LANs used to connect different hospital departments. Access can also be provided to the Internet via a firewall, dial-up telephone connections, DSL, cable-modem, or the like (column 3, lines 30-43).

Column 4, lines 15-36 of O'Rourke are concerned with configuring and using this hierarchy of available communications channels and are not concerned with and do not address checking and enabling the operability of an application program in conjunction with a data file. .

Column 4, lines 37-50 of O'Rourke set forth a sequence of menus, (see, for example, Figures 9-20B), which the user navigates to retrieve the desired medical information. This section does not address or relate to checking and enabling the operability of an application program in conjunction with a data file.

Column 4, lines 50-58 of O'Rourke address the issue of whether a user is authorized to access to the information. Under the HIPAA laws, medical information must be kept confidential. It cannot be accessed by anyone curious in looking at it, or even just any medical personnel within a medical facility. Rather,

access to medical information is limited to an appropriately small subset of people who should legitimately view a given patient's medical information. This section of O'Rourke relates to limiting a given user's access to only appropriate information within the medical facility database.

Accordingly, it is submitted that column 4, lines 15-58 of O'Rourke referenced by the Examiner does not discuss an application program which includes a validation software portion and a processing software portion, much less make any suggestion that such a program be modified to enable its validation software section to be executed separately and independently from the processing software. Such issues are not addressed in column 4, lines 15-58 of O'Rourke.

Column 6, lines 4-52 of O'Rourke referenced by the Examiner also do not address these issues. First, as discussed above, the HIPAA requirements limit access to medical information. The first portion of this section of O'Rourke addresses passwords and limiting access only to authorized personnel. The second portion of this section of O'Rourke addresses a series of menus to assist the user in navigating the medical database. A medical facility has one or a series of databases which store the medical information for patients of the medical facility. The medical facility might be a single hospital, an entire hospital system, or the like. In any case, it is a massive amount of information which could be difficult to navigate and find the appropriate information. This section of O'Rourke proposes a series of menus which enables the user to zero-in on and retrieve the desired information easily. This section does not address or discuss an application program which includes (1) a validation software portion for checking and enabling the operability of an application program with a data file and (2) a processing software portion which executes the functionality when enabled by the validations software.

A complex medical system which underlies the portable access device of O'Rourke may well have prior art application programs embedded in it, but O'Rourke does not address any such prior art application program, much less propose or suggest a modification to such prior art application program such that a validation software portion is executed separately and independently from the processing software.

O'Rourke neither addresses application programs as defined in lines 5-9 of claim 1 nor addresses the acknowledged shortcoming of the acknowledged prior art as a reference, i.e., executing the validation software of an application program as defined in lines 5-9 separately and independently from the processing software portion.

Accordingly, it is submitted that claim 1 and claims 2-9 dependent therefrom distinguish patentably over the references of record.

B. Claim 2 Distinguishes Patentably Over the References of Record

Claim 2 calls for the user interface to start execution of the validation software and then, after completing execution of the validation software, communicating a result of the execution to the user. O'Rourke does not disclose a user interface that executes validation software which checks the compatibility of an application program and a data file separately and independently from the processing software of the application program. Nor, does O'Rourke communicate the result after the software checks the compatibility of the application program and the data file.

By distinction, O'Rourke receives a user password which validates a user.

Accordingly, it is submitted that claim 2 distinguishes patentably over the references of record.

C. Claim 3 Distinguishes Patentably Over the References of Record

Claim 3 calls for a user interface to start execution of the validation software which checks whether an application program is operable with a data file. Validating the software and data file compatibility is then followed by executing the processing software. Referring to page 2, lines 1-11 of the present application referenced by the Examiner and the remainder of page 2, the problem with the prior art is that the processing software is executed before or concurrently with the validation software, wasting time, battery life, and the like.

Accordingly, it is submitted that claim 3 distinguishes patentably over the references of record.

D. Claim 4 Distinguishes Patentably Over the References of Record

Claim 4 calls for the user interface to start the execution of the validation software and, after completion of the execution of the validation software, to communicate the data file(s) that are operable in conjunction with the application program. By contrast, column 4, line 36 – column 6, line 33 of O'Rourke discuss the use of passwords to limit user access to records. The password validates the user, not the compatibility of application software and a data file.

Even once the user in O'Rourke gains access via a password, O'Rourke still has the same problem as the acknowledged prior art in that there is no validation software which checks the compatibility of a given application program and a data file, which validation software is executed separately and independently from the processing software.

Accordingly, it is submitted that claim 4 distinguishes patentably over the references of record.

E. Claim 5 Distinguishes Patentably Over the References of Record

Claim 5 calls for the user interface to start the execution of the validation software upon selection of the data file and thereafter communicate the application program(s) that are operable in conjunction with the selected data file.

The Examiner references page 4, lines 18-30 of the present application. Page 4, lines 18-25 of the present application start off “The data processing system to which the invention relates...” Page 4, lines 26-31 of the present application do not describe starting execution of validation software in response to selecting a data file nor does this section suggest that after completion of the validation process, that the program(s) that are operable in conjunction with the selected data file should be communicated, all performed separately and independently from the processing software or its execution. To the contrary, lines 26-31 are describing the prior art systems in which validation software and the processing software are integral portions

of an applications program in which one cannot execute the validation software without executing the processing software.

Accordingly, it is submitted that claim 5 distinguishes patentably over the references of record.

F. Claim 6 Distinguishes Patentably Over the References of Record

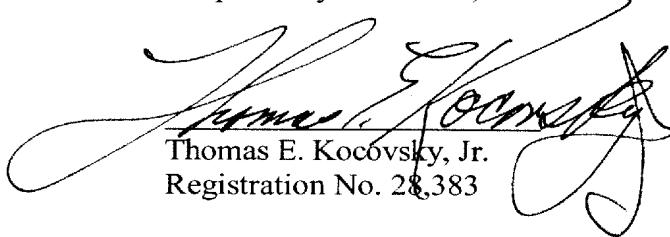
Page 4, lines 18-25 of the present application do not disclose a memory which stores the results of the execution of validation software which was executed separately and independently from processing software of the application program.

Accordingly, it is submitted that claim 6 distinguishes patentably over the references of record.

G. Conclusion

For the reasons set forth above, it is submitted that claims 1-9 distinguish patentably and unobviously over the references of record. An early reversal of all of the Examiner's rejections is requested.

Respectfully submitted,



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(viii) CLAIMS APPENDIX

1. (Rejected) Data processing system comprising a computer having a memory for storage and retrieval of at least one application program embodying a pre-determined functionality, and for storage and retrieval of at least one data-file, which computer comprises a user interface for entertaining communication between the computer and a user of said computer, wherein the at least one application program comprises validation software for checking and enabling the operability of said application program in connection with the at least one data-file, and processing software for executing the said functionality in connection with the at least one data-file in dependence of said enabling by the validation software, wherein the validation software is executed separately and independently from the processing software.
2. (Rejected) Data processing system according to claim 1, wherein the user interface starts execution of the validation software and after completion thereof communicate a result of said execution to the user.
3. (Rejected) Data processing system according to claim 1, wherein the user interface starts execution of the validation software and/or starts execution of the validation software immediately followed by execution of the processing software.
4. (Rejected) Data processing system according to claim 1, wherein upon selection of an application program the user interface starts execution of the validation software of said application program in connection with all available data sets and after completion thereof communicates the data-file or data-files that are operable in connection with said application program.
5. (Rejected) Data processing system according to claim 1, wherein upon selection of a data-file the user interface starts execution of the validation software of all available application programs and after completion thereof

communicates the application program or programs that are operable in connection with said data-file.

6. (Rejected) Data processing system according to claim 1, wherein the user interface has a memory for storage and retrieval of a result or results from executing the validation software.

7. (Rejected) Data processing system according to claim 1, wherein the at least one application program and the at least one data-file relate to medical information.

8. (Rejected) Data processing system according to claim 7, wherein the medical information is medical diagnostic information.

9. (Rejected) Data processing system according to claim 7, wherein the at least one data-file contains information derived with an apparatus selected from the group of MRI-, CT-, X-ray-, and ultrasound-systems.

10-11. (Cancelled)

(ix) EVIDENCE APPENDIX

None.

(x) RELATED PROCEEDINGS APPENDIX

None.